

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

PAUL M. LAM,	)	Case No. 06-CV-514
	)	
Defendant-Appellant,	)	Chapter 7
	)	
-v-	)	(Judge Dlott)
	)	
JINNY L. LAM,	)	
	)	
Plaintiff-Appellee.	)	

**MOTION TO STRIKE DOCUMENTS INCLUDED  
IN THE DESIGNATION ON APPEAL AND  
RELATED REFERENCES IN APPELLATE BRIEF**

Plaintiff-Appellee, Jinny Lam, hereby submits the following Motion to Strike Documents Included in the Designation on Appeal and Related References in Appellate Brief.

**I. PRELIMINARY STATEMENT**

This court should strike documents that are included in the designation of the record on appeal. Mr. Lam has submitted and made reference to documents that were not, and in fact could not, have been presented to the trial court since a number of the documents were obtained by Mr. Lam after the judgment that was issued by the trial court. Also, at least one document is impermissible settlement discussions and should be stricken from the record.

**II. PROCEDURAL HISTORY**

The procedural history of Mr. Lam's appellate designation is surprisingly long. Mr. Lam failed to file the notice of appeal for an extended time, and ultimately Ms. Lam moved to dismiss

the appeal for failure to file the designation. Ultimately, Mr. Lam filed a designation. Judge Hopkins permitted an extension of time to file the designation.

Ms. Lam has already moved to strike a number of the items that were included in the original designation. Specifically, Ms. Lam moved to strike Items No. 16 through 23 of the Appellant's designation. At the time, these were the only documents selected for a motion to strike since Mr. Lam had sent correspondence to undersigned counsel seeking these documents. As such, it was clear that these documents could not have been presented to the trial court since Mr. Lam, even after the judgment, did not have possession of the documents. Judge Hopkins granted the motion to strike, and the record on appeal does not include Items No. 16 through 23.

### **III. RELIEF REQUESTED**

A more extensive analysis of the record and the designation that Mr. Lam has sent to this Court reveals that there are further documents that are not appropriately in front of this Court.<sup>1</sup> For example, Documents No. 1 and 2 are dated in 2006 and clearly could not have been presented to the trial court. Document No. 3 is also dated from the first quarter of 2006 and for the same reason could not have been presented to the trial court. Document No. 5 presents statistics on job outlooks from the edition 2006 and 2007. Also, Document No. 10 is labeled by Mr. Lam as a proposal from counsel which falls under the purview of inadmissible settlement discussions pursuant to Federal Rule of Evidence 408.

In his Appellate Brief, Mr. Lam relies on the above documents. Since these documents should not be considered by this Court, Ms. Lam requests that the Court strike these arguments from his opening brief. *In re Cook*, 457 F.3d 561, 567 (6th Cir. 2006) ("This court has

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<sup>1</sup> It was difficult to determine for what purpose Mr. Lam included items in his designation until reviewing the opening brief. Normally an appellee would have the benefit of the statement of issues required by Federal Bankruptcy Rule 8006, but Mr. Lam never filed this document.

repeatedly held that it will not consider arguments raised for the first time on appeal unless our failure to consider the issue will result in a plain miscarriage of justice.”)

Accordingly, Ms. Lam requests that the Court strike documents 1-3, 5 and 10 from the record on appeal and further strike the arguments based on such documents.

Respectfully submitted,

/s/ Brian P. Muething

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### **CERTIFICATE OF SERVICE**

I hereby certify that this 11th day of September I filed a copy of the foregoing MOTION TO STRIKE DOCUMENTS INCLUDED IN THE DESIGNATION ON APPEAL AND RELATED REFERENCES IN APPELLATE BRIEF using the Court's CM/ECF system that will automatically send notice and provide service to those registered with the system for this adversary proceeding. I also served a copy upon Paul M. Lam, 217 W. 12<sup>th</sup> St., Cincinnati, Ohio 45202 by ordinary U.S. mail.

/s/ Brian P. Muething

Brian P. Muething

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